

Law Office of Kathryn M. Amirpashaie, PLC
406 Blue Ridge Avenue NE, Leesburg, Virginia 20176

Kathryn M. Amirpashaie

Telephone: 703.771.8394
E-Mail: kmalawoffice@gmail.com

October 12, 2016

VIA CERTIFIED MAIL

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Mail code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Notice of Intent to Sue under the Federal Clean Air Act

Dear Administrator Gina McCarthy:

This letter provides notice, pursuant to 42 U.S.C. § 7604(b), that the Sierra Club intends to file a citizen suit against the United States Environmental Protection Agency (“EPA”) and the Administrator of the EPA, based on your failure to perform a nondiscretionary duty set forth under Title V of the Clean Air Act (“CAA” or “Act”). Specifically, Sierra Club intends to file suit over your failure to, within the time frame required by 42 U.S.C. § 7661d(b)(2), grant or deny the petition submitted by Sierra Club seeking an objection by EPA to the Title V Operating Permit renewal, Permit No. 83-0025/561209 (hereafter “Proposed Permit”), proposed by the Tennessee Department of Environment and Conservation (“TDEC”) for Tennessee Valley Authority’s Gallatin Fossil Plant (“Gallatin”). Sierra Club’s petition was delivered via electronic filing and e-mail to EPA on August 8, 2016. As of today, more than 60 days have passed without EPA taking action on said petition, in violation of the Administrator’s nondiscretionary duty under CAA section 505(b)(2) to grant or deny the petition within 60 days after it was filed. See 42 U.S.C. § 7661d(b)(2).

I. Gallatin Is Subject to Title V of the Clean Air Act

Title V of the CAA requires specified sources of air pollution to obtain an operating permit from a permitting authority. 42 U.S.C. § 7661a(a). Tennessee's construction and operating permit programs have been approved by EPA and, accordingly, TDEC is responsible for issuing Title V permits to facilities within the State. See Tennessee Air Pollution Control Regulations Chapter 1200-03-09; see also 40 C.F.R. Part 70, Appendix A, Tennessee (a)(2) ("The State's operating permit program is hereby granted final full approval effective on November 30, 2001.").

Gallatin's Title V permit was issued on February 24, 2003, and expired February 24, 2008. On August 22, 2007, the Plant submitted an application for renewal of its permit. On February 11, 2016, TDEC issued a Proposed Title V Permit renewal to Gallatin, initiating a 30-day public comment period. On March 11, 2016, Sierra Club submitted timely comments on the Proposed Permit. In pertinent part, Sierra Club's comments raised issue with: the permit's unacceptably lax compliance mechanisms for opacity, particulate matter ("PM"), and fugitive dust emissions; its impermissible startup/shutdown/malfunction provisions; its failure to include appropriate monitoring and reporting provisions to ensure compliance with a 2011 Consent Decree; and its unreasonably high sulfur dioxide ("SO₂") emissions limit.

II. EPA Failed to Grant or Deny Sierra Club's Petition to Object to the Proposed Permit for the Gallatin Plant within the Statutorily Required Time Frame

As per CAA section 505(b)(1), within 45 days of receipt of a proposed Title V permit, the Administrator of the EPA "shall . . . object" to the permit's issuance if it "contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of [the CAA], including the requirements of an applicable implementation plan." 42 U.S.C. § 7661d(b)(1). If EPA does not object during this period, any person may petition the Administrator for issuance of an objection within 60 days after the expiration of the 45-day review period. 42 U.S.C. § 7661d(b)(2). Accordingly, the timing for EPA to object to the Proposed Permit for Gallatin and for the public to petition EPA to object to the Proposed Permit was as follows: EPA's 45-day review period ended on June 27, 2016; the 60-day public petition period ended on August 26, 2016. See E-Mail from Eva Land, U.S. EPA Region 4, to Isabelle Riu, Sierra Club Legal Assistant, Subject: Petition Deadline for TVA's Gallatin Title V Permit, June 27, 2016, attached hereto as Exhibit 1.

EPA did not object to the Gallatin Proposed Permit within the allotted 45-day time frame. Consequently, Sierra Club filed a petition to object to the Proposed Permit on August 8, 2016, within 60 days after the expiration of EPA's 45-day review period, in accordance with 42 U.S.C. § 7661d(b)(2). The Petition to EPA was properly based on issues raised during the public

comment period for the Proposed Permit. Specifically, the Petition raised objection with the Proposed Permit's impermissibly lax compliance requirements for opacity, PM, and fugitive dust, its failure to incorporate monitoring and reporting requirements to ensure compliance with a governing 2011 Consent Decree, its inclusion of startup/shutdown provisions inconsistent with the CAA, and an unreasonably permissive SO₂ limit.

According to CAA section 505(b)(2), the Administrator was required to respond to Sierra Club's August 8, 2016 petition within 60 days, either granting or denying the Petition. 42 U.S.C. § 7661d(b)(2) ("The Administrator shall grant or deny such petition within 60 days after the petition is filed."). However, as of October 12, 2016, EPA has yet to respond to the petition to object to the Gallatin Title V Permit.

III. Citizens May Sue EPA for Failure to Timely Grant or Deny a Petition to Object

Section 304(a)(2) of the CAA provides that any person may sue the Administrator of the EPA "where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary." 42 U.S.C. § 7604(a)(2). Section 505(b)(2) of the CAA expressly provides that the "Administrator shall grant or deny [a petition to object] within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2) (emphasis added). This provision imposes a mandatory, nondiscretionary duty upon EPA to act within 60 days of the filing of a petition under this section. Accordingly, in the event that the Administrator fails to perform this nondiscretionary duty, citizens may bring suit to compel such action.

IV. Sierra Club Intends to File a Citizen Suit to Compel EPA to Grant or Deny the Petition to Object

Sierra Club filed a timely petition to object to the Proposed Title V Permit for Gallatin on August 8, 2016. The Administrator had 60 days—until October 7, 2016—to grant or deny the petition to object to the Proposed Permit. See 42 U.S.C. § 7661d(b)(2). As of October 12, 2016, the Administrator has not yet granted or denied the Petition to Object. Therefore, the Administrator has failed to perform the nondiscretionary duty to grant or deny Sierra Club's Petition within the statutorily mandated time frame, in violation of 42 U.S.C. § 7661d(b)(2).

The CAA requires citizens to provide the Administrator with 60 days notice prior to bringing an action under CAA section 304(a)(2) where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator. 42 U.S.C. § 7604(b)(2); see also 40 C.F.R. 54.2(a). Accordingly, through this letter, Sierra Club hereby notifies EPA and the Administrator of its intent to file suit against EPA and the Administrator of the EPA under CAA section 304(a)(2) for failing to perform the nondiscretionary duty of granting or denying Sierra Club's August 8, 2016 petition to object to

the Proposed Title V Permit renewal for Gallatin. If the violation remains unresolved at the end of the 60-day notice period, Sierra Club intends to seek the following relief:

1. An order compelling EPA and the Administrator to grant or deny Sierra Club's Petition within 60 days from the date of the order;
2. Attorneys' fees and other litigation costs; and
3. Other appropriate relief as allowed.

If you would like to discuss the matters identified in this letter or offer a proposal for resolving this issue, please contact me directly at kmalawoffice@gmail.com or (703) 771-8394.

Sincerely,

/s Kathryn Amirpashaie

Kathryn M. Amirpashaie, Esq.
Law Office of Kathryn M. Amirpashaie, PLC
406 Blue Ridge Avenue NE
Leesburg, VA 20176
Tel.: 703.771.8394
E-mail: kmalawoffice@gmail.com

Zachary M. Fabish, Esq.
The Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20009
Tel.: 202.675.7917
E-mail: zachary.fabish@sierraclub.org

Counsel for the Sierra Club

cc via e-mail only:

Michael Lee (lee.michaelg@epa.gov)

Randy Terry (terry.randy@epa.gov)

Arthur Hofmeister (hofmeister.arthur@epa.gov)

Keri Powell (powell.keri@epa.gov)

EXHIBIT 1



Kathryn A <kmalawoffice@gmail.com>

Fwd: Petition Deadline for TVA's Gallatin Title V Permit

Isabelle Riu <isabelle.riu@sierraclub.org>
To: Kathryn A <kmalawoffice@gmail.com>

Wed, Oct 5, 2016 at 12:37 PM

----- Forwarded message -----

From: **Land, Eva** <Land.Eva@epa.gov>
Date: Mon, Jun 27, 2016 at 11:01 AM
Subject: RE: Petition Deadline for TVA's Gallatin Title V Permit
To: "Ceron, Heather" <Ceron.Heather@epa.gov>, Isabelle Riu <isabelle.riu@sierraclub.org>

Isabelle,

I believe that is correct. We received the permit for sequential review on 5/13, our review ends today, and the petition deadline is on 8/26.

Please let me know if you have any further questions.

Eva

From: Ceron, Heather
Sent: Thursday, June 23, 2016 12:56 PM
To: Isabelle Riu <isabelle.riu@sierraclub.org>
Cc: Land, Eva <Land.Eva@epa.gov>
Subject: RE: Petition Deadline for TVA's Gallatin Title V Permit

According to what is in our database that is correct. I have copied Eva so she can confirm when she returns on Monday. She would have the actual hard copy to verify the date.

From: Isabelle Riu [<mailto:isabelle.riu@sierraclub.org>]
Sent: Thursday, June 23, 2016 12:54 PM
To: Ceron, Heather <Ceron.Heather@epa.gov>
Cc: Land, Eva <Land.Eva@epa.gov>
Subject: Re: Petition Deadline for TVA's Gallatin Title V Permit

Thank you, Heather. Confirming what you said, the deadline by which a petition seeking EPA objection to the Gallatin Title V permit would be due by August 26.

Best,

Isabelle

On Thu, Jun 23, 2016 at 12:24 PM, Ceron, Heather <Ceron.Heather@epa.gov> wrote:

Looking in our database it looks like 8/26/2016.

From: Isabelle Riu [mailto:isabelle.riu@sierraclub.org]
Sent: Thursday, June 23, 2016 10:24 AM
To: Ceron, Heather <Ceron.Heather@epa.gov>
Subject: Fwd: Petition Deadline for TVA's Gallatin Title V Permit

Hi Heather,

I am forwarding this request to you as I just received Eva's out of office message.

Isabelle

----- Forwarded message -----

From: **Isabelle Riu** <isabelle.riu@sierraclub.org>
Date: Thu, Jun 23, 2016 at 10:21 AM
Subject: Petition Deadline for TVA's Gallatin Title V Permit
To: land.eva@epa.gov

Hi Eva,

I just left you a voicemail but I am reaching out to find the petition deadline for TVA's Gallatin plant. It was on the website before but seems to have been taken down. The Title V Permit number is 83-0025/561209. Please let me know if you have any questions and I look forward to hearing from you!

Best,

Isabelle

--

Isabelle Riu

Research Analyst

Sierra Club Environmental Law Program

50 F Street, NW, Eighth Floor

Washington, DC 20001

[202-495-3023](tel:202-495-3023) (office)

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

WASHINGTON, DC 20460

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

0302
10

Postage \$0.68

Total Postage and Fees \$0.68

Sent To: (Gallatin NOI)

Special Medium, U.S. EPA

Street and Apt. No. or PO Box No.
1200 Pennsylvania Ave NW

City, State, ZIP+4®
Washington DC 20460



7016 0840 0000 04ED 9102